

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

DOLE FRESH VEGETABLES, INC.^{1/}

Employer

and

Case 9-RC-17437

INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 20

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

^{1/} The Employer's correct legal name appears as amended at hearing.

5. The Employer, a corporation, is engaged in the processing and the wholesale distribution of fresh vegetables at its Springfield, Ohio facility, the only facility involved in this proceeding.^{2/} The Employer employs approximately 15 employees in the unit found appropriate. There is no history of collective bargaining affecting any of the employees involved in this proceeding.

The Petitioner seeks to represent a unit comprised of all maintenance employees employed by the Employer at its 600 Benjamin Drive, Springfield, Ohio facility, including all maintenance technicians, maintenance package technicians, lead maintenance technicians, and maintenance parts clerks, but excluding all other hourly employees, managerial employees, and all guards and supervisors as defined in the Act. Contrary to the Petitioner, the Employer contends that the only appropriate unit must include all hourly paid production and maintenance employees, quality assurance employees, raw materials employees, sanitation employees and shipping and receiving employees. Additionally, the Petitioner and the Employer disagree on the unit placement of the lead maintenance technicians, whom the Employer would exclude from the unit on the basis that they are supervisors within the meaning of Section 2(11) of the Act. The parties agree, and the record reflects, that these are the only issues in dispute.

The Employer is a subsidiary of Dole Food Company, the world's largest producer of fresh vegetables and fruits. The Employer employs approximately 310 total employees at its Springfield, Ohio of whom 268 are employed in the plant area, including approximately 15 maintenance employees. The Employer runs production 5 or 6 days a week from approximately 7:30 a.m. until the schedule is completed, usually about midnight. The Employer then sanitizes the entire facility and restarts production each morning.

All employees enter the facility through the front of the building where a handscan activated time clock verifies their attendance. As one is facing the facility, toward the left and front is an office area which contains offices for the plant manager, an assistant, the controller, the payroll clerk, customer service offices, and two vacant offices for visitors to the facility. The Employer's production operation begins at the right side of the facility toward the back where the raw vegetables are received and temporarily stored in inventory.

When actual production begins the raw vegetables, primarily lettuce, are brought to the trim or prep area, which is located near the center of the facility. Production employees in the trim room remove the cores and the outer leaf segment of the lettuce. The lettuce is then placed on conveyors. The lettuce then goes through a cutter, a wash tank system, and further toward the middle of the facility into the dewatering and drying room. In the drying area the lettuce is placed into dryers that are akin to large salad spinners. When the drying process is completed the lettuce is removed from the dryers and placed into one of about five basket elevators. The basket elevators transport the lettuce up to scales, which weigh the produce. The lettuce is then placed into packaging

^{2/} The Employer also has vegetable processing facilities in Salidad, California and Uma, Arizona.

machines that are located below the scales and to the left of the dewatering and drying room. The lettuce is bagged by packaging machines that are operated by packaging machine operators and goes through conveyors and metal detectors. Production employees designated as packers then handpick the bagged product. The packers place the bagged product in cartons which are placed on pallets in the palletizing area located toward the rear and left of the facility. Finally, the completed product is placed in finished goods storage at the left and rear of the facility from where it is shipped to customers generally within 12 to 24 hours.

A long hallway runs the length of the Employer's facility toward the front of the building. The Employer's manufacturing or production area is located behind the hallway and constitutes the bulk of the facility's square footage. The areas described below, as well as the aforementioned offices and employee time clock area, are located toward the front of the facility and on the opposite side of the bisecting hallway. To the right of the front entrance to the facility is a locker room utilized by hourly production employees and an employee cafeteria. Just to the right of the cafeteria, outside the facility, is a smoking area with tables and ashtrays. The cafeteria and the smoking area are available to all employees. Just to the right of the cafeteria located at the front and near the middle of the facility is the maintenance shop, which includes upstairs offices for maintenance supervisors and a work area for the maintenance parts clerks. The maintenance shop also contains lockers that are utilized by the maintenance employees for tool storage.^{3/} To the right of the maintenance shop is a utility room and then the sanitation room, which is referred to as the sanitation cage. To the right of the sanitation room is the chlorine room where the Employer stores gases and chlorine and where water is treated before it goes into the facility. To the right of the chlorine room is the air compressor room and the electrical room (equipment rooms), and at the right front corner of the facility is the ammonium compressor room. The Employer's quality lab is located adjacent to the office area near the front and toward the left of the facility. The Employer's production area is further distinguished from the maintenance shop and other areas to the front of the bisecting hallway by the fact that it is kept refrigerated at between 34 and 36 degrees Fahrenheit to keep the vegetables fresh. The maintenance shop, sanitation room, quality lab and other areas forward of the hallway are kept at a comfortable room temperature.

Plant Manager Lenny Pelifian is the highest ranking on-site manager of the Employer and is in charge of the day-to-day operation of the facility. The Employer's production manager, Jeanine Paige, reports directly to Pelifian. Under Paige there are first and second shift trim supervisors, first and second shift packaging supervisors and a third shift sanitation supervisor. Each of the trim and packaging supervisors has two leads who report up through them, for a total of eight production leads. The quality assurance department has a manager, a first shift supervisor with two leads reporting to the supervisor, and a second shift supervisor with one lead. The raw materials

^{3/} These tools are characterized on the record as quite expensive. However, it is unclear whether maintenance employees own the tools, although an Employer witness refers to the tools used by the maintenance employees as "their" tools.

department has a manager and first and second shift lead who report directly to the manager. However, the second shift lead position is currently vacant. The shipping department has a manager with four shift supervisors, each of whom has a lead that reports to them. There is also a human resources manager and a finance manager and supervisor located at the facility.

The Employer's maintenance department is headed by a manager but the position is currently vacant. Reporting to the maintenance manager are first and second shift maintenance supervisors. Both shift supervisors have a lead that reports to them. However, the lead position on the first shift is also currently vacant. In addition, there is a lead on the third shift who reports to the second shift maintenance supervisor for about the first two hours of the third shift and, in the case of a situation requiring immediate attention, will seek supervision from the third shift sanitation supervisor. In the absence of a maintenance manager, the maintenance shift supervisors report directly to Pelifian, who is currently acting maintenance manager. First Shift Maintenance Supervisor Donny Stevens and Second Shift Maintenance Supervisor Joe Clark supervise a total of ten maintenance technicians, including the two maintenance leads, and two maintenance parts clerks. The maintenance leads, Robert Ford and Larry Saunders, each rotate shifts with a crew of about three other maintenance employees. The maintenance technicians and leads rotate shifts every 4 weeks.

Until about July 19, 2000, the packaging technicians were immediately supervised by Packaging Technician Supervisor Bill Myers. Following Myers' departure from the Employer's employ the packaging technicians have been immediately supervised by Melissa Johnson and James Holcomb, the first and second shift packaging supervisors, respectively. In addition, immediate supervision of the packaging technicians is provided by maintenance supervisors, who may authorize overtime and provide assistance in areas requiring maintenance expertise. There are currently three packaging technicians, one of whom is a maintenance technician working in the packaging department. However, two additional packaging technicians recently left the Employer's employ and within the 10 days preceding the hearing the Employer posted five packaging technician positions for bid.

The Employer's production employees perform a variety of distinct duties depending on the area in which they are employed. In the raw materials area the receiving forklift employees are primarily responsible for unloading trucks of raw materials and placing them into inventory and loading the production lines as they require raw materials. The receiving forklift cull employees work in the cull room, which is part of the raw materials area where water is recovered from discarded lettuce. The receiving forklift cull employees then load the dried lettuce on trucks that transport the produce to a composting facility.

In the production trim area the line loaders place boxed lettuce onto conveyors for trimmer employees to trim. Color blend employees trim red cabbage and introduce carrots into a color blend system that adds color to the finished bagged product. The romaine trimmers use a knife to cut the core off the romaine lettuce. The trimmers then

remove the outer wrapper leaves on the romaine heads and place the trimmed romaine lettuce back on a conveyor. The iceberg trimmers use a fixed chlorine ring to remove the core from the iceberg heads. They then remove the wrapper leaves from the iceberg lettuce. The clean up employees are responsible for keeping the trim area clean.

The dryer operators operate a dryer deck or basket that holds between 200 and 350 pounds of wet lettuces. The dryer operators place the lettuces in the dryer. When the dryer cycle is complete they place the lettuces onto basket carts and a basket pusher transports the lettuce to the basket elevators. These two tasks are interchangeable and are performed as needed.

In the packaging room, master pack inserters place a packet of croutons and dressing (master pack) onto an inserting device which inserts the master packs under each bag of salad. Employees called master pack watchers sit at the end of the line to make sure that there is a master pack in every bag of salad. Packers then pick the bags of salad off the conveyor and put them into a preformed carton. Stackers take the cartons that are filled with bagged salads and place them on a pallet. Rework employees are responsible for removing bagged product that fails to meet quality specifications and, where appropriate, reintroducing the lettuce in the production process and recovering the master pack. Box erector employees operate a machine that makes the boxes or cartons into which the salads are placed. Forklift/palletizer operators remove the completed pallets of product to the finished goods warehouse or take them off the palletizer and place them in the finished goods warehouse.

The sanitation technicians are responsible for cleaning the plant and placing it in a germ free status prior to the beginning of the next production cycle. They work the third shift from the end of production until start-up, between 3 and 6 hours each shift depending on the production schedule. In the quality assurance department the quality assurance technicians monitor all of the quality processes in the facility, including temperature, air, the temperature of the water, chlorine level of the water used in wash systems and bag weights. The quality assurance employees are also responsible for testing equipment, such as metal detectors to ensure that they are functioning properly. In the shipping department the shipping forklift operators take product out of inventory, stage orders and load trucks.

In the maintenance department, the maintenance technicians are in charge of all the production equipment in the plant and all of the facilities' equipment. The packaging technicians are responsible for all of the equipment in the packaging room, including scales, baggers, and box elevators. The maintenance parts clerks ensure that the Employer has an adequate inventory of parts available to perform preventive maintenance and any other parts necessary to keep the equipment and facility in operation.

The packaging technicians and maintenance technicians perform similar types of work, albeit in different areas of the facility. Thus, employees in both classifications spend a significant amount of work time performing equipment repair or breakdown

work, which is necessary to keep the production process operational. Employees in both classifications also devote significant working hours to preventive maintenance tasks and monitoring equipment and processes for potential problems. Additionally, when time permits, employees in both classifications work on rebuilding parts and equipment that have degraded through use. Such work may be performed in the maintenance shop.

The packaging technicians and maintenance technicians both perform "start up" routines at the beginning of the first shift each workday. The packaging technicians set up the packaging machines and indexing machines that are used to insert the master packs. The packaging technicians then start all of the conveyors in the packaging room and the elevators. Packaging technicians then run "pre-flight" tests on all the equipment in the packaging room, including ensuring that the heaters that seal the bagged product are functioning properly and ensuring that the scales and scale buckets are functional. This "start up" function takes about 30 to 40 minutes. Maintenance technicians on the first shift perform similar "start up" tasks on all of the other production equipment in the facility.

Packaging technicians must be familiar with the mechanisms involved in the specialized packaging machines in the packaging area as well possessing an aptitude for repairing and maintaining that equipment. Indeed, the record discloses that the Employer sends new packaging machine technicians for specialized maintenance training on the packaging machines that is conducted by the supplier of the equipment. The Employer characterizes this training as expensive and not available to other employees. Employees in the maintenance technician classification possess a variety of specialized skills. However, certain maintenance technicians may possess a greater degree of skill and knowledge than their coworkers with regard to one or more particular area. For example, on one of the maintenance technician crews, one of the employees is more skilled as an electrician, another more skilled as a welder, and two others possess a greater degree of expertise as wrench mechanics.

The same personnel policies are applicable to all hourly employees, including disciplinary and work rules of conduct and standardized performance evaluations. All employees are eligible to receive the same fringe benefits. As demonstrated below, maintenance employees are paid significantly more than the highest paid production employees. The entry rate for packaging technicians and the maintenance parts clerks is \$13.50 an hour. The entry rate for maintenance technicians is \$14 an hour. The Employer apparently phased out a higher rate of \$18 an hour for maintenance technicians for a classification called maintenance technician II. The record discloses that at least one employee was hired at that rate as recently as November 1998. Additionally, the record discloses that the current packaging machine technicians all earn \$16 an hour as a result of obtaining a successful score on a written test relating to their field. Finally, maintenance leads are paid \$19.25 an hour.

In contrast to the hourly pay rates of the maintenance employees, employees in the production classifications of trimmer, line loader, color blend, cleanup, master pack inserters, master pack watchers, packers, stackers, and rework are paid an entry level

wage of \$7.50 an hour and production employees classified as dryer operators, deck operators, basket pushers, box erectors, and quality assurance technicians receive an entry wage of \$8.50 an hour. Sanitation technicians are paid an entry wage of \$9 an hour and all forklift drivers initially earn \$10.50 an hour. Packaging machine operators apparently earn between \$12 and \$13 an hour but the entry level wage is somewhat lower. All hourly employees are eligible for a 25 cent an hour raise after 6 months and for an additional 25 cents an hour on their first anniversary date and each subsequent anniversary date. All hourly employees are paid weekly with the payroll period ending on Saturday.

The Employer's operation is generally a three-shift operation with the first two shifts being production shifts. However, starting times for employees are staggered depending on when they are needed in relation to the production process, which normally commences at 7:30 a.m. Thus, employees on the first shift in the raw materials department start work at about 6:30 a.m. to set up vegetables so they are available for the commencement of the production process. In fact, one employee in this department may report significantly earlier than 6:30 a.m. to help unload truckloads of raw materials. Trimmers and dryer operators on the first shift report to work at 6:48 a.m. and production packaging employees report to work at 7:18 a.m. Quality assurance employees report between 5:30 a.m. and 6:30 a.m. on the first shift. Maintenance employees on the first shift report between 6 a.m. and 6:30 a.m. The shift times are similarly staggered for employees who work the second shift. Sanitation employees only work on the third shift and typically report to work about 10:30 p.m. The Employer's shipping department is the one department that is scheduled to operate 7 days a week, 24 hours a day because of the perishable nature of the Employer's product. Thus, employees in the shipping department work a variety of schedules to ensure coverage, including a 3-day schedule with 12- hour shifts from 6 a.m. to 6 p.m. and a traditional 8-hour shift.

The maintenance parts clerks spend all their working hours in the maintenance shop area. The record testimony is vague with regard to the amount of work time spent on the production floor by the packaging and maintenance technicians. Plant Manager Pelifian estimated that the packaging technicians spend nearly 90 percent of their working hours on the plant floor and the remainder of their work time in the maintenance shop. He further estimated that the maintenance technicians spend approximately 75 to 90 percent of their work time on the plant floor and the remainder of their work time in the maintenance shop. The record discloses that Pelifian's estimates in this regard are an educated guess based on his knowledge of the operation as a whole rather than hard estimates predicated on personal observation. However, the other broad testimony on this subject is generally consistent with those estimates, with the exception of testimony that the maintenance leads are on the production floor approximately 50 percent of their working hours. This lower percentage of work time on the production floor may be attributable in part to their various record keeping responsibilities.

The maintenance and packaging technicians are generally performing repair, preventive maintenance, or monitoring functions while they are on the plant floor. However, they may perform production work on a sporadic basis if the need arises. For

example, record testimony discloses that one maintenance technician spent 3 or 4 hours performing production work in the preceding month. Additionally, the two current maintenance leads testified that they had spent a total of 3 or 4 days performing production work in a span of 2½ years in one case and slightly less than 2 years in the other. Performance of production work by a maintenance employee for an entire shift is very rare. One employee testified that the longest he had performed production work at any given time was 6 hours and that this occurred only under extraordinary circumstances when a large number of production employees walked off the job. By the same token, very few production employees perform any type of maintenance functions. Packaging machine operators are occasionally called on to perform basic maintenance tasks on their machines. Additionally, two or three packaging machine operators have been utilized to perform preventive maintenance tasks for overtime pay on about six Saturdays over the course of the past year. Finally, it appears that some production employees may occasionally offer routine assistance in breakdown repair such as handing or retrieving a tool for a maintenance or packaging technician.

The record discloses that of those employees currently employed in the maintenance department four of the fifteen bid into maintenance positions from production positions. The maintenance parts clerks both bid into that position from production positions and two of the maintenance packaging technicians bid into that position from production positions. Formalized training is not necessary for a successful bidder into a packaging technician position. However, applicants are selected based on demonstrated skill and aptitude for maintenance on the packaging machines and related equipment. The remaining maintenance employees were all hired from outside the Employer's workforce. The record reflects that there has been no occasion where maintenance employees have bid into production positions.

ANALYSIS OF APPROPRIATE UNIT:

In reaching my unit decision, I note that Section 9(a) of the Act only requires that a unit sought by a petitioning labor organization be an appropriate unit for purposes of collective bargaining and there is nothing in the statute which requires that the unit for bargaining be the only appropriate unit, or the ultimate unit or even the most appropriate unit. *Morand Brothers Beverage Co.*, 91 NLRB 409, 418 (1950). Moreover, the unit sought by the petitioning labor organization is always a relevant consideration and a union is not required to seek representation in the most comprehensive grouping of employees unless an appropriate unit compatible to that requested does not exist. *Overnite Transportation Company*, 322 NLRB No. 122 (1996); *Purity Food Stores*, 160 NLRB 651 (1966). Although other combinations of the Employer's employees may also be appropriate for collective bargaining, I need only determine whether the employees sought by the Petitioner constitute an appropriate unit. Here, there is no history of collective bargaining which might affect my determination as to the composition of the unit.

The Board noted recently that, "It is the Board's longstanding policy, as set forth in *American Cyanimid Co.*, 131 NLRB 909 (1961), to find separate maintenance department

units appropriate when petitioned for where the facts of the case demonstrate the absence of a more comprehensive bargaining history and that the petitioned-for maintenance employees have the requisite community of interest." *Capri Sun, Inc., a Wholly-Owned Subsidiary of Kraft Foods, Inc.*, 330 NLRB No. 158 (2000). The Board examines several factors to determine whether a sufficient separate community of interest exists among the maintenance employees. These factors include "mutuality of interests in wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions, frequency of contact and interchange with other employees; and functional integration." *Ore-Ida Foods*, 313 NLRB 1016, 1019 (1994), citing *Franklin Mint Corp.*, 254 NLRB 714, 716 (1981); *Capri Sun, Inc.*, supra.

Applying the above criteria to the subject case, I conclude that the petitioned for maintenance unit constitutes a distinct and cohesive grouping of employees appropriate for collective bargaining purposes. In this connection, I note that all of the maintenance employees receive a significantly higher entry level wage than the highest paid production employees. In fact, the lowest paid maintenance employees earn nearly twice as much as the \$7.50 an hour entry level wage that many of the production employees receive. Additionally, it is clear that the maintenance employees generally possess a much greater degree of skill than the production employees. Thus, with the exception of the maintenance parts clerks, maintenance employees perform skilled work that production employees do not perform such as mechanical and electrical repair, welding, and complex preventive maintenance and rebuild tasks. In contrast, the work performed by most of the production employees is repetitious assembly line type work.

Most of the maintenance employees are under the immediate supervision of First Shift Maintenance Supervisor Donny Stevens and Second Shift Maintenance Supervisor Joe Clark. Additionally, if an emergency arose after midnight on the third shift the maintenance technicians would seek supervisory guidance from the sanitation supervisor. The packaging technicians are currently under the immediate supervision of Packaging Supervisors Melissa Johnson and James Holcomb. However, they are also supervised at times by the maintenance supervisors. Moreover, this is a recent change following the departure of the maintenance manager and the packaging technician supervisor. Plant Manager Pelifian is also currently acting as maintenance manager as a result of the former maintenance manager leaving the Employer's employ. Finally, the Employer currently lists the maintenance manager position as vacant in the description of its supervisory structure, refers to Pelifian as acting maintenance manager and apparently intends to fill the maintenance manager position at some point. The record does not disclose whether the packaging technicians will continue under the immediate supervision of the packaging supervisors once a maintenance manager is hired.

The maintenance employees and production employees share many of the same employee amenities and requirements such as utilizing the same parking lot and time clock and having access to the same lunchroom and restroom facilities. However, the maintenance employees have separate locker facilities and spend at least a portion of their working hours in the maintenance shop to which they report on a daily basis. Although many of the maintenance employees have daily contact with the production

employees, there are few production employees in the facility during most of the third shift when production is not run. Additionally, the two maintenance parts clerks spend virtually all of their work time in the maintenance department and do not have work related contact with production employees. The maintenance technicians and packaging technicians, when they work on the production floor, often work in the vicinity of some of the production employees as they perform their dichotomous role of adjusting machines, monitoring their performance, and repairing breakdowns. However, the work performed by the maintenance employees is not directly related to the work of the production employee.

There is some permanent interchange from production to maintenance but there is no interchange flowing in the other direction. Additionally, most maintenance jobs are filled from outside the Employer because production employees generally do not possess the necessary skills and aptitude to perform more than the least complex maintenance tasks. In this connection, I note that employees who are selected from the production work force to perform hands on maintenance work with equipment are sent by the Employer for specialized training at its expense. Although the record does not disclose precise numbers, it appears that employee turnover among production employees is quite high while the maintenance employees in comparison constitute a relatively stable workforce.

The record discloses that temporary interchange between production and maintenance employees occurs on an infrequent basis. Thus, a small number of production employees, more specifically some of the packaging machine operators, will perform basic preventive maintenance tasks during the course of their shifts and as a Saturday overtime assignment on an average of once every 2 months. However, none of this work involves the more complex preventive maintenance and repair work that packaging machine technicians and maintenance technicians regularly perform. Further, most maintenance employees who occasionally perform production work do so for brief periods of time and significantly less than an entire shift. The record discloses that the Employer discourages the performance of production work by maintenance employees unless it is necessary. Indeed, the Employer is attempting to eliminate even the occasional need for maintenance employees to perform production tasks, in part because maintenance employees are paid a significantly higher wage to perform their duties.

In finding the proposed maintenance unit to be appropriate for purposes of collective bargaining, I have carefully considered the legal precedent cited by the Employer in support of its position on this issue and I find the cases relied on to be inapposite and distinguishable from the case at bar. In *The F & M Schaeffer Brewing Co.*, 198 NLRB 323 (1972), the Board found a separate maintenance group to be inappropriate where one of the four parties to the proceeding sought such a unit rather than a combined production and maintenance unit. However, in *F & M Schaeffer Brewing*, unlike the subject case, the duties of the production and maintenance employees were interchangeable to a degree, the maintenance employees possessed only basic mechanical skills and the more complex mechanical work was subcontracted. Moreover, the production and maintenance employees in *F & M Schaeffer Brewing* were all

required to have some maintenance or mechanical background, all received the same mechanical aptitude test, and all received the same training in the operation and repair of the employer's equipment. *Id.* at 324, 325. In contrast, the Employer's maintenance employees have specialized skills, receive special training, and perform all of the necessary maintenance tasks in the facility. These tasks include complex repair work and the actual rebuilding of degraded equipment and parts. The Employer's production employees do not and cannot perform such work.

Similarly, in *Timber Products Co.*, 164 NLRB 1060 (1967), cited by the Employer, the Board found a maintenance only unit inappropriate in part because the employer contracted out its complex maintenance work. Additionally, in *Timber Products*, unlike here, there was a significant degree of permanent and temporary interchange among production and maintenance employees, including the sharing of job functions.

The Board's decision in *U.S. Plywood-Champion Papers, Inc.*, 174 NLRB 292 (1969), relied on by the Employer, is also distinguishable from the subject case based on the substantial integration and interchange of job functions between the production and maintenance employees in that case. *Id.* at 294-295. Moreover, the Board in *U.S. Plywood* considered as factors in reaching its unit determination the industry bargaining pattern in the *basic lumber industry* and the substantial stability in labor relations which had been engendered in part by historical bargaining in that industry on a plant-wide basis. Such factors are not present in the subject case.

The Employer cites the Board's decisions in *Kimball Systems, Inc.*, 164 NLRB 290 (1967); *Universal Form Clamp Co.*, 163 NLRB 184 (1967); and *Monsanto Company*, 172 NLRB 1461 (1968), in support of its proposition that the Employer's maintenance parts clerks and maintenance packaging technicians perform routine tasks and should, in any event, be included in a combined unit with the production employees. I find these cases distinguishable because I find the premise itself to be faulty. Although not clear on the record, it appears that the packaging technicians may possess less skill and perform tasks of a less complex nature than those performed by the maintenance technicians. However, I note that the packaging technicians are the only group specified on the record as receiving specialized training to perform their duties. Moreover, packaging machine operators, who are the production employees most familiar with the packaging room equipment, do not perform the more complex tasks associated with those machines that are performed by the packaging technicians. The maintenance parts clerks appear to perform tasks of a more routine nature as their duties primarily involve the ordering of parts, presumably parts inventory, and other functions requiring the input of data to the Employer's computer system. However, the maintenance parts clerks do interact with maintenance employees on a limited basis in performing these functions and clearly as plant clerical employees share a greater community of interest with the other maintenance employees than with the production employees as a group. Further, to deny these two employees inclusion in an appropriate maintenance unit would be tantamount to denying them representation in any group as they constitute a residual unit of two employees. For these reasons alone I find the above-cited cases relied on by the Employer to be distinguishable. However, *Kimball Systems* is also distinguishable based on the high

degree of work integration, common supervision, and substantial employee interchange not found in the subject case. The Board's decision in *Universal Form Clamp*, is distinguishable in part as that case involves a petition requesting severance of tool room employees who had been included in a plant-wide unit for 20 years. Here, there is no history of bargaining on a broader basis. Finally, in *Monsanto*, the electrical employees sought performed less complex tasks and many employees in other classifications routinely performed the same duties.

Based on the foregoing, the entire record and having carefully considered the arguments of the parties at the hearing and in their briefs, I conclude that the petitioned-for maintenance unit constitutes a distinct and cohesive grouping of employees appropriate for collective bargaining purposes. See, *Capri Sun, Inc.*, supra.; *Ore-Ida Foods*, supra. Accordingly, I shall direct an election among the employees in such unit.

SUPERVISORY STATUS OF MAINTENANCE LEADS:

Contrary to the Petitioner, the Employer maintains that the maintenance leads must be excluded from the Unit as supervisors within the meaning of Section 2(11) of the Act. At the time of the hearing, Larry Saunders and Robert Ford were employed as maintenance leads and a third maintenance lead position was vacant. The primary function of the maintenance leads is to keep the Employer's equipment running. In this regard, maintenance leads spend approximately 50 percent of their work time on the production floor and most of that time is spent repairing machine and equipment breakdowns. Similar to the other maintenance technicians, the maintenance leads are also responsible for performing preventive maintenance tasks and rebuild work. Additionally, the maintenance leads are responsible for compiling a master list of maintenance tasks performed by themselves and the approximately three other maintenance employees on their respective shifts. They then input this information into the Employer's computer system. When a maintenance lead is absent this information is inputted by one of the maintenance parts clerks, a maintenance shift supervisor, or possibly by a maintenance technician. All maintenance employees are required to keep a maintenance work sheet recording work actually performed and it is from these records that the maintenance leads compile the master list. Although the employees' hours of work are recorded by its handscan activated time clock system, the maintenance leads also compile a report of instances when maintenance technicians work through their lunch, so that they are paid for this normally unpaid period. The maintenance leads then transmit this information to the maintenance shift supervisors for their signatures.

The maintenance leads and the other maintenance technicians rotate every 4 weeks from one of the Employer's three principal shifts to the next. The maintenance shift supervisors do not rotate shifts. The maintenance supervisors have offices in the maintenance shop area but the maintenance leads do not have offices. The maintenance leads are paid hourly and receive time and a half for any overtime work performed, whereas the maintenance shift supervisors are salaried, as are all of the Employer's undisputed supervisors. Additionally, the maintenance leads receive the same health care coverage that is provided to all of the hourly employees. Although the maintenance shift

supervisors and other undisputed supervisors receive different health care coverage from that received by the maintenance leads and other hourly employees, the record does not reflect how the two types of coverage differ. The record does not disclose the difference in pay received between maintenance supervisors and maintenance leads. However, the record establishes that maintenance leads are currently paid \$3 an hour more than the next highest paid maintenance employee. Ford, however, was paid \$18 an hour as a maintenance technician prior to becoming a maintenance lead and received only a dollar increase. Plant Manager Pelifian testified that the Employer has since eliminated the \$18 per hour rate of pay for maintenance technicians.

I note that Plant Manager Pelifian testified in generalities about the authority that maintenance leads purportedly possess and exercise. In addition, the Employer failed to provide specific evidence that the maintenance leads were advised by it that they possessed any of the criteria for supervisory status set forth in Section 2(11) of the Act. The record does disclose that an attorney for the Employer told at least one of the maintenance leads that the Employer considered the leads to be supervisors. In this connection, the leads attended at least one training session that, in addition to the leads, was only attended by the Employer's supervisory personnel. This training session involved employee motivation and how to obtain goals. There is conflicting testimony as to whether it included presentations or discussions regarding how to supervise employees. Additionally, one of the leads also attended annual meetings with members of management and supervision where the attendees were advised by an attorney for the Employer as to what type of conduct was permissible and impermissible in the context of a union organizing campaign.

With regard to the existence of supervisory authority, the record shows that Maintenance Leads Saunders and Ford have never hired or fired employees or made any recommendations with regard to hiring or firing. The record also discloses that maintenance leads lack authority to suspend, transfer, reward or promote employees or to effectively recommend such action. Additionally, there is no evidence that maintenance leads play any role in the layoff or recall of employees.

With regard to discipline, the record discloses that any discipline more serious than a written warning is handled above the level of a supervisor or leads. With regard to such lesser discipline, Ford and Saunders each were involved in separate instances involving the issuance of a written warning more than a year prior to the hearing in the subject case. The record reflects that they have not had any involvement with issuing discipline or recommending such action before or since that time.

In the instance where Ford was involved in the issuance of a written warning, the maintenance manager at the time instructed Ford to issue a written warning to a maintenance technician for operating a battery charger in an unsafe manner and causing a piece of equipment to break. The maintenance manager told Ford to write down what had occurred on the warning form, to sign it, and to have it signed by the maintenance technician involved. Similarly, Saunders was instructed by the maintenance manager to write up a maintenance technician for failing to properly perform a maintenance task that

resulted in damage to other equipment. The maintenance manager told Saunders what to write on the warning notice form and what type of violation he was to indicate. Saunders recommended that the maintenance technician involved not be disciplined for the offense. However, the maintenance manager did not follow Saunders' recommendation and the employee was issued the warning. The maintenance manager and Saunders both met with the maintenance technician about the matter and the maintenance manager took responsibility for issuance of the discipline.

In about October 1998, prior to the introduction of maintenance shift supervisors into the maintenance department, Ford and Saunders were each instructed by the maintenance manager to prepare performance evaluations for groups of three employees. In the situation involving Ford, he and the maintenance manager went over the numerical ratings together and determined which numbers to give the employees in the several different categories. Saunders was responsible for even less input into the evaluations that he assisted in preparing. The maintenance manager suggested rating numbers in each category for the three employees who worked on the same shift as Saunders and Saunders merely complied with the maintenance manager's suggestions. With respect to both of the above described situations involving the participation by maintenance leads in performance evaluations, all of the employees evaluated had already received the standard 25 cent an hour raise for the period covered by the evaluation. Indeed, the record discloses that these standard increases are virtually automatically given to employees who work the requisite timeframe. The record establishes that Ford and Saunders have not been involved in evaluating employee performance before or since that time.

Saunders participated in the hiring process on a single occasion when Maintenance Shift Supervisor Clark asked him to sit in on an interview of an applicant for a maintenance position who represented himself as having significant electrical experience. Clark asked Saunders to ask the applicant a few electrical questions during the interview because Saunders is an electrician by trade. Clark asked Saunders after the interview if the applicant had the electrical knowledge he claimed to possess based on the applicant's answers to Saunders' questions. Saunders indicated that the applicant was generally correct in his response to Saunders' electrical questions. However, he was not asked and did not make a recommendation regarding whether the applicant should be hired.

With regard to the assignment of work, the record discloses that the maintenance leads cannot independently authorize overtime and they cannot send employees home early or authorize them to leave work early. Moreover, the maintenance leads do not assign tasks to the maintenance technicians. Rather, the maintenance shift supervisors prepare work orders for the maintenance leads and the maintenance technicians that specify which tasks each maintenance employee is to perform. This method of work assignment occurs on all three shifts. Second Shift Supervisor Clark is present for at least the first 2 hours of the third shift and also prepares work orders for that shift. Clark may also e-mail the maintenance lead on the third shift about a particular problem that he wants addressed. For breakdowns that occur after Clark leaves the facility on the third shift the problem is typically addressed by an available maintenance technician in the

vicinity of the breakdown. In the event simultaneous repair issues arise during the third shift after Clark's departure, it appears that the maintenance technicians, including the maintenance lead, simply agree who will handle which job. Responsibility for such tasks may simply be determined by the nature of the repair problem and the skills required to effectuate the repair. As noted above, some maintenance employees are more proficient in electrical skills, others in welding skills and others possess superior mechanical skills. Maintenance employees may also be directed to perform a particular maintenance task by a production supervisor. Finally, packaging technicians and maintenance technicians on all three shifts have a computerized schedule of preventive maintenance work to perform and if they have any available time on a shift there is also a substantial backlog of degraded equipment to be rebuilt.

ANALYSIS OF MAINTENANCE LEADS SUPERVISORY STATUS:

Section 2(11) of the Act defines a supervisor as a person:

. . . having authority in the interest of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing, the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment. . . .

It must be noted, however, that in enacting Section 2(11) of the Act, Congress emphasized its intention that only supervisory personnel vested with “genuine management prerogatives” should be considered supervisors, and not “straw bosses, leadmen, set-up men and other minor supervisory employees.” *Chicago Metallic Corp.*, 273 NLRB 1677, 1688 (1985). Although the possession of any one of the indicia specified in Section 2(11) of the Act is sufficient to confer supervisory status, such authority must be exercised with independent judgment and not in a routine manner. *Hydro Conduit Corp.*, 254 NLRB 433, 437 (1981). Moreover, the exercise of “supervisory authority” in merely a routine, clerical, perfunctory or sporadic manner does not confer supervisory status. *Feralloy West Corp. and Pohng Steel America*, 277 NLRB 1083, 1084 (1985); *Chicago Metallic Corp.*, supra; *Advanced Mining Group*, 260 NLRB 486, 507 (1982). It is also well established that the burden of proving that an individual is a supervisor rests on the party asserting supervisory status. See, *Beverly Enterprises-Ohio d/b/a Northcrest Nursing Home*, 313 NLRB 491 (1993); *Ohio Masonic Home*, 295 NLRB 390, 393 (1989). “Accordingly, whenever the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established at least on the basis of those indicia.” *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). I find in the instant matter that the Employer has not met its burden to establish that Ford and Saunders are supervisors within the meaning of Section 2(11) of the Act. To the contrary, the record evidence affirmatively discloses that Ford and Saunders do not possess any indicia of supervisory authority within the meaning of Section 2(11) of the Act. Thus, the record establishes

that they do not have the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline, responsibly to direct the work of employees or to adjust their grievances, in a manner requiring the exercise of independent judgment.

The Employer contends that Ford and Saunders are statutory supervisors ^{4/} based on their purported possession of supervisory authority, involvement in issuing discipline to employees, involvement in handling employee grievances, and involvement in recommending wage increases. Additionally, it relies on their attendance at "management" meetings, involvement in recording employee time and work performed, involvement in hiring, access to the Employer's computer system and the fact that the telephone numbers of leads are contained on an emergency phone list used to contact managers and supervisors in emergency situations. As indicated above, I disagree with the Employer's position vis a vis the supervisory status of maintenance leads, including Ford and Saunders. I specifically discount the limited, circumscribed, and routine nature of the maintenance leads' involvement in the duties expressly relied on by the Employer in asserting that the maintenance leads are supervisors.

The Employer's assertion that it is the existence of supervisory authority and not the exercise of it that determines whether an individual is properly classified as a statutory supervisor is correct. See, *Cox Enterprises, Inc. d/b/a Atlanta Newspapers*, 263 NLRB 632, 633 (1982); *Hook Drugs, Inc.*, 191 NLRB 189, 191 (1971). However, the record does not support the Employer's argument. There is simply no evidence of a grant of supervisory authority to the maintenance leads, including Ford and Saunders. For example, I note that Plant Manager Pelifian testified he had not conveyed to the maintenance leads that they had authority with respect to hiring and he had not directed any supervisor or manager to convey the existence of such authority to them. Although a representative of the Employer may have told a maintenance lead that the Employer considered the leads to be "supervisors" it is well settled that an individual's title is not determinative of supervisory status. See, *St. Alphonses Hospital*, 261 NLRB 620, 626, fn. 14 (1982); *The Washington Post Company*, 254 NLRB 168, 171, fn. 22 (1981). Merely calling the maintenance leads supervisors without more does not serve to imbue them with supervisory status within the meaning of Section 2(11) of the Act. In sum, the Employer's testimony on this issue generally lacked specificity and where specific evidence was presented Section 2(11) authority was not manifested.

With regard to the responsibilities of the maintenance leads in discipline and evaluating employee performance, I note initially that a single instance of involvement in disciplining and evaluating employees is insufficient to confer supervisory status. In this connection, it is well settled that where the exercise of Section 2(11) authority is sporadic and isolated that such conduct is insufficient to confer statutory supervisory authority. *Feralloy West Corp. and Pohng Steel America*, supra; *Chicago Metallic Corp.*, supra; *Advanced Mining Group*, supra. Additionally, without regard to the sporadic and isolated nature of such conduct, the limited and circumscribed nature of the involvement of the

^{4/} The Employer also contends that the vacant maintenance lead position possesses the same attributes as those possessed by Ford and Saunders and, when filled, must also be excluded from the unit on the same basis.

maintenance leads in disciplinary action and employee performance evaluation on the facts of this case would not serve to confer statutory supervisory authority on them. For example, Ford and Saunders did not initiate disciplinary proceedings in the events in which they were involved and Saunders unsuccessfully recommended that the employee who received the written warning not be disciplined. Additionally, an undisputed supervisor not only initiated the disciplinary action in both instances, but also instructed Ford and Saunders how to prepare the written warning. Similarly, with regard to employee evaluations, the undisputed supervisor initiated the evaluations and had pervasive involvement in the process. Thus, Ford and Saunders did not exercise independent judgment with respect to their involvement in the single instance of disciplinary action connected to them or with respect to their participation in a single instance of evaluating employee performance.

With regard to Saunders' participation in a hiring interview and his recommendation that an employee receive a wage increase, I note again that supervisory authority is not established on the record facts. Thus, Saunders' participation in the hiring interview was clearly limited to lending his supervisor his expertise in the electrical field for the purpose of permitting the supervisor to make an informed judgment about the applicant's qualifications. Saunders did not make a recommendation with regard to hiring and certainly was not involved in the actual hiring decision. With respect to his request that Plant Manager Pelifian grant a wage increase to a maintenance employee, I note that Pelifian rejected this request and the employee on whose behalf Saunders approached Pelifian did not receive a wage increase. Moreover, Saunders testified that he made this request as a friend of the employee and not in any supervisory capacity. Regardless, the rejection of the request, without any other examples, establishes that the maintenance leads do not make effective recommendations with respect to rewarding employees.

With regard to Ford and Saunders involvement in recording employee time and compiling a list of completed maintenance tasks, it is well settled that the mere exercise of a reporting function that does not automatically lead to further discipline or adverse action against an employee does not establish supervisory authority. See, *Lincoln Park Nursing and Convalescent Center*, 318 NLRB 1160, 1162 (1995); *Lakeview Health Center*, 308 NLRB 75, 78-79 (1992). There is no record evidence here that discipline or adverse job action against maintenance employees may even be implicated by the recordkeeping functions of the maintenance leads. Accordingly, I conclude that Ford's and Saunders' involvement in compiling a master list of maintenance tasks to be performed as well as their involvement in compiling tracking records of maintenance employees who work through their lunches is merely a reportorial function which does not require the use of independent judgment.

The record with regard to the role of the maintenance leads in grievance handling is sparse and again does not show the existence of supervisory authority within the meaning of the Act. Thus, Plant Manager Pelifian testified that he was unaware of Ford or Saunders ever adjusting employee grievances and could not specifically recall whether he had ever conveyed such authority to them. Moreover, the record does not contain a single example of any maintenance lead, including Ford and Saunders ever having

adjusted employee grievances. Saunders testified generally that other maintenance employees had voiced "concerns" to him about work related issues. The single instance he cited was a general example of an employee voicing concern about another employee engaging in a perceived unsafe practice. Saunders did not attempt to adjust the employee's grievance. Rather, he merely reported it to a supervisor as he does in all instances where employees engage in unsafe conduct in the workplace. However, Saunders does not make any recommendations in such situations and the record testimony discloses that all employees are responsible for reporting unsafe conduct.

Finally, I note the record establishes that maintenance leads have attended at least some Employer meetings at which the other attendees are the Employer's management and supervisory personnel and which are geared toward managerial and supervisory issues. Additionally, the Employer lists the maintenance leads on its emergency phone list and has granted them access to its computer system. None of these factors, in the absence of primary indicia of supervisory authority, establishes that the maintenance leads, including Ford and Saunders, are supervisors within the meaning of Section 2(11) of the Act. In this regard, I note that the statutory language of Section 2(11) clearly establishes and the Board has repeatedly held that secondary indicia of supervisory status will not serve to confer supervisory authority on a putative supervisor of any of the primary indicia of such status. *Billows Electric Supply of Northfield, Inc.*, 311 NLRB 878 fn. 2 (1993); *Juniper Industries, Inc.*, 311 NLRB 411, (1993).

Based on the foregoing, and the record as a whole, and having carefully considered the arguments of the parties at the hearing and in their briefs, I find that the maintenance leads, including Ford and Saunders, are not supervisors within the meaning of Section 2(11) of the Act. Specifically, I note that none of the cases relied on by the Employer in its brief suggests a contrary result. Accordingly, I shall include maintenance leads, including Robert Ford and Larry Saunders, in the unit.

STIPULATED SUPERVISION:

The parties stipulated and the record shows that Lenny Pelifian, plant manager and acting maintenance manager; Donny Stevens, first shift maintenance supervisor; and Joe Clark, second shift maintenance supervisor, have the authority to fire, discharge or discipline employees or to direct their work in a manner requiring the use of independent judgment and are supervisors within the meaning of Section 2(11) of the Act. Accordingly, I shall exclude them from the Unit.

Based on the foregoing, the record as a whole and careful consideration of the arguments of the parties at the hearing and in their briefs, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining:

All maintenance employees including maintenance technicians, maintenance packaging technicians, maintenance parts clerks and maintenance leads,

employed by the Employer at its 600 Benjamin Drive, Springfield, Ohio facility, excluding all production employees, quality assurance employees, raw materials employees, sanitation employees, shipping and receiving employees, office clerical employees, all other employees, and all professional employees, guards and supervisors as defined in the Act.

Accordingly, I shall direct an election among the employees in such unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **International Union of Operating Engineers, Local 20**.

LIST OF ELIGIBLE VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters using full names, not initials, and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB No. 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **September 26, 2000**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **October 3, 2000**.

Dated at Cincinnati, Ohio this 19th day of September 2000.

Richard L. Ahearn, Regional Director
Region 9, National Labor Relations Board
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, Ohio 45202-3271

420-1218
420-2906
420-2930
420-2966
440-1760-9167
177-8560-1500
177-8560-5000
177-8560-8000